UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

RONALD MELTON, et al., Plaintiffs,	:	NO. 1:01-CV-00528
v.	:	**ORDER**
BOARD OF COUNTY COMMISSIONERS OF HAMILTON COUNTY, OHIO, et al., Defendants.	:	

This matter is before the Court on Plaintiffs' Motion for Voluntary Dismissal (doc. 101), Defendants' Memoranda in Response (docs. 106, 107, 108, & 109), and Plaintiffs' Reply (doc. 111). Also before the Court are Plaintiffs' Second Motion for Extension of Time to File Memorandum in Opposition to Defendants' Motions for Summary Judgment (doc. 102), and Defendants' Memoranda in Opposition (docs. 107 & 109); Plaintiffs' Motion for Extension of time to File Final Pretrial Statement (doc. 103), and Defendants' Memoranda in Opposition (docs. 107 & 109); Plaintiffs' First Motion to Continue Trial Date (doc. 104), and Defendants' Memoranda in Opposition (docs. 107 & 109); and Plaintiffs' Motion For Continuance of Pretrial Conference (doc. 110), which was unopposed.

Plaintiffs move the Court pursuant to Fed. R. Civ. P. 41(a)(2) for voluntary dismissal (doc. 101). The pertinent language of Rule 41(a)(2) provides:

> [A]n action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

Fed. R. Civ. P. 41(a)(2). Plaintiffs indicate that there has been no counterclaim filed in the present case, and therefore the Court may order the case voluntarily dismissed, even should the Defendants object (doc. 101). Defendant Tobias agrees that Plaintiffs' Motion should be granted so as to expedite the resolution of this suit (doc. 106). In contrast, The Hamilton County Defendants disagree, arguing that Plaintiffs have not responded to their motion for summary judgment, that Defendants have expended much time and resources on this case, and therefore dismissal without prejudice is improper (doc. 107). The Hamilton County Defendants argue that to dismiss the case without prejudice would be an abuse of discretion under Grover by Grover v. Eli Lilly and Co., 33 F.3d 716, 718 (6th Cir. 1994) and Ali v. St. John Hospital, 836 F.2d 549 (6th Cir. 1987), due to the lack of diligence of Plaintiffs, Plaintiffs' failure to explain a need for dismissal, the time and effort expended by Defendants, and the pending motions for summary judgment (doc. 107). In the alternative, the Hamilton County Defendants argue that if the Court dismisses the case, Plaintiffs should be required to compensate them for expenses incurred in defending this action (Id.). Defendant Condon similarly opposes Plaintiffs' Motion on the same basis, and similarly requests his attorney's fees (doc. 108). Defendant Carl Parrott does not object to a dismissal of the case with prejudice, but argues that the Court should not dismiss the case without prejudice because it has not considered his pending motion for summary judgment (doc. 109).

Plaintiffs respond essentially that the actions of Defendants' agents forced them to file this suit so as to get to the truth of what happened to their brother while his body was in the custody of the County (doc. 111). Plaintiffs further respond that they have incurred their own significant expenses in order to learn the truth about what happened (Id.). Plaintiffs take exception to the case law cited by Defendants. Plaintiffs argue that neither the Ali nor Grover cases involved the outrageous circumstances in this case where Plaintiffs were informed by agents of Defendants of alleged wrongful acts involving the corpse of their loved one (Id.). Plaintiffs argue that Defendants' callousness in seeking money damages is further exacerbating an already hurtful situation (Id.).

Having reviewed this matter, the Court finds it appropriate under the circumstances to grant Plaintiffs' Motion (doc. 101). Plaintiffs are indeed correct that the facts of this case militate against any sort of award of attorneys' fees to

Defendants. Plaintiffs brought their suit after having learned of improper activity in the morgue. Plaintiffs did not know to what extent, if any, the corpse of their brother had been abused. Discovery enabled them to come to grips with the facts of the case. Moreover, Plaintiffs' suit, which preceded all other litigation over the events in the morgue, arguably paved the way for the class action that the Court has certified in Chesher v. Neyer, No. 01-566.[1] The Court does not find the facts of this case on point with Grover by Grover v. Eli Lilly and Co., 33 F.3d 716, 718 (6th Cir. 1994) and Ali v. St. John Hospital, 836 F.2d 549 (6th Cir. 1987). Finally, Defendant Tobias agrees that Plaintiffs' Motion should be granted so as to expedite the resolution of this suit (doc. 106). The Court finds merit in such position.

Accordingly, pursuant to Fed. R. Civ. P 41(a)(2), the Court GRANTS Plaintiffs' Motion for Voluntary Dismissal (doc. 101), and DISMISSES this case without prejudice. Having done so, the Court finds it appropriate to DENY AS MOOT all of the remaining motions on the docket: the Hamilton County Defendants' Motion to

[1] Although the Court previously denied consolidation of the cases, it appears that Plaintiffs may very well fall within the class definition certified in Chesher, which includes the family members of all the deceased whose remains, for other than a proper government purpose, were accessed, viewed, manipulated, or photographed by Thomas Condon, Jonathon Tobias, M.D., or one of their agents between August 2000 and January 2001 (inclusive) while such bodies were in the custody of the Hamilton County Coroner's Office, without permission from the legal representatives of the deceased. (Chesher, (doc. 111)). Even if Plaintiffs would opt out of the Chesher class, it is clear that the principal legal issues arising from the morgue scandal should be settled by the Chesher litigation.

Compel Discovery (doc. 77); Defendants' respective Motions for Summary Judgment (docs. 81, 82, 83, & 84); Plaintiffs' Second Motion for Extension of Time to File Memorandum in Opposition to Defendants' Motions for Summary Judgment (doc. 102); Plaintiffs' Motion for Extension of time to File Final Pretrial Statement (doc. 103); Plaintiffs' First Motion to Continue Trial Date (doc. 104); and Plaintiffs' Motion For Continuance of Pretrial Conference (doc. 110). The Court VACATES the status conference scheduled in this matter for 2:00 P.M. on June 24, 2004, and DISMISSES this case from the Court's docket.

SO ORDERED.

Dated: June 22, 2004

/s/ S. Arthur Spiegel

S. Arthur Spiegel
United States Senior District Judge